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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 1039

THE UNITED STATES OF AMERICA, PETITIONER

v.

ANNA SHEPANEK, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF WILLIAM BABICZ, ALSO KNOWN AS WILLIAM LA VALLEY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit entered in the above entitled case on December 13, 1941.

OPINIONS BELOW

The District Court for the Northern District of Illinois rendered no opinion. The opinion of the Circuit Court of Appeals is reported in 124 F. (2d) 747.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 13, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

Whether compensation accruing to a World War veteran after he has become totally permanently disabled may be used under the provisions of Section 305 of the World War Veterans' Act to revive his lapsed war risk term insurance where such compensation was uncollected on the date of the death of the veteran.

An incidental question presented is—

Whether the fact that no issue was raised between the Government and an insured during his lifetime as to whether he was totally permanently disabled precludes a defense to a claim for the revival of lapsed insurance under Section 305 that the insured became totally permanently disabled at a time when no compensation was due him.

STATUTES INVOLVED

Section 305 of the World War Veterans' Act, as amended, will be found in the petition for a writ of certiorari (pp. 2–3) in *The United States of America* v. *American National Bank and Trust Company of Chicago, Administrator, etc.*, No. 1038,

present term, filed simultaneously with this petition. A letter from the Administrator of Veterans' Affairs to the Solicitor General, dated February 16, 1942, appears in the Appendix to that petition (pp. 12–14). The other pertinent statutes and a letter from the Administrator of Veterans' Affairs to the then Solicitor General, dated January 14, 1941, appear in the Appendix to the Government's petition for a writ of certiorari (pp. 18–25) in *United States* v. *Florian,* 312 U. S. 656, nine copies of which have been filed with the petition in the *American National Bank and Trust Company* case for the convenience of the Court.

STATEMENT

This suit on a $2,000 policy of war-risk term insurance was brought December 30, 1938, in the District Court of the United States for the Northern District of Illinois by the respondent, Anna Shepanek, as beneficiary and as administratrix of the estate of the insured. (R. 2–4.) In an amended petition (R. 8–12) she sought benefits on the basis of an alleged revival of the insurance under Section 305, World War Veterans' Act, upon the death of the insured. It was alleged, in effect, in the amended petition (and admitted in the Government's answer (R. 13–15)) that the insurance lapsed on January 1, 1919, while the insured was suffering from a compensable disability for which compensation was uncollected

(R. 9), and that on the date of his death, December 23, 1922 (R. 8), he was entitled to compensation remaining uncollected in an amount sufficient to have maintained the insurance in force to that date (R. 10).

The Government based its defense solely upon affirmative allegations in its answer (R. 13–15) that the insured became totally and permanently disabled on July 10, 1921, and that on that date he was not entitled to any uncollected compensation (R. 14–15). The compensation accruing after that date and remaining uncollected on the date of the insured's death could not, the Government asserted in effect, be applied to the revival of the insurance. (R. 15.)

The respondent moved for a summary judgment awarding death benefits. (R. 17.)[1] The Government filed an answer to the motion (R. 20) stating in effect that it stood upon the affirmative allegations in its answer as to the occurrence of total permanent disability at a time when the insured was not entitled to any uncollected compensation.

The District Court entered judgment for the respondent in accordance with the motion (R. 22–26), thus rejecting the Government's defense. The Government appealed. (R. 27.) The Cir-

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[1] The motion was based on the amended petition (R. 8–12), admissions in the answer (R. 13–15), a stipulation of facts (R. 16), and an affidavit in support of the motion (R. 18–19).

cuit Court of Appeals for the Seventh Circuit affirmed upon the authority of its decision rendered the same day in the *American Nat. Bank and Trust Co.* v. *United States*, 124 F. (2d) 743, review of which, as previously stated, is sought by the Government in a petition (No. 1038) filed simultaneously with the present petition.

SPECIFICATIONS OF ERRORS TO BE URGED

The errors to be urged are identical with those specified in the Government's petition for a writ of certiorari in *The United States of America* v. *American National Bank and Trust Company of Chicago, Administrator, etc.*, No. 1038.

REASONS FOR GRANTING THE WRIT

The present petition should be granted for the reasons set forth in the Government's petition for a writ of certiorari in *The United States of America* v. *American National Bank and Trust Company of Chicago, Administrator, etc.*, No. 1038, and elaborated in the Government's petition for a writ of certiorari in *United States* v. *Florian*, 312 U. S. 656.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

MARCH 1942.

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